REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed May 21, 2003. In the Office Action, claims 4-6, 9, 11-12, 15-17 and 22-37 have been rejected under 35 U.S.C. §103(a). Applicant respectfully disagrees with the rejection in its entirety.

Claims 4-6, 9, 11-12, 15-17, 22-23 and 25-37 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,311,588 issued to Polcyn, et al. (Polcyn) in view of U.S. Patent No. 6,125,345 issued to Modi, et al. (Modi) and U.S. Patent No. 6,223,154 issued to Nicholls, et al. (Nicholls). Applicant respectfully clarifies that arguments set forth in the prior Amendment and Response dated December 3, 2002 were directed to the teachings of Nicholls as applied to Polcyn and Modi. The focus of the discussion was directed to Nicholls to traverse the Examiner's interpretation of the applicability of such teachings for determining whether or not a current audio frame represents voice or silence.

The Office Action states that both Polcyn and Modi fail to provide any teachings of short-term averaged energy or long-term averaged energy in the voice/speech detection process. *See page 3 of the Office Action.* Instead, the teachings of Nicholls are relied on for the teachings of using "averaged energy determinations and calculations for the purpose of providing an enhanced voice activity detection system for deciding when received audio contains voice or other audio information of importance." *See Page 4 of the Office Action.* Applicant respectfully contend that a *prima facie* case of obviousness has not been established because (staggered) averaged energy calculations of Nicholls has no relationship whatsoever to the utilization of *short-term* and *long-term* averaged energy computations to determine whether or not an audio frame is silence. Hence, such teachings do not provide the necessary motivation to the combined system of Polcyn and Modi to render the claimed invention obviousness.

As the Examiner is aware, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. *See In re Fine,* 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The mere absence [from the reference] of an explicit requirement [of the claim] cannot reasonably be construed as an affirmative statement that [the requirement is in the reference.]. *See In re Evanega,* 829 F.2d 1110, 4 U.S.P.Q.2d 1249 (Fed. Cir. 1987). Short-term averaged energy and long-term averaged energy are expressly set forth in independent claims 6 (lines 3-6), 12 (lines 6-12), 15 (lines 11-22) and 22 (lines 3-8). Applicant respectfully submits that neither Nicholls, Polcyn nor Modi, teach or even suggest the use of the long-term averaged energies as claimed.

Moreover, as aptly stated by the June 30, 2000 decision by the Federal Circuit in *In re Kotzab*, 55 U.S.P.Q.2d (BNA) 1313, 1316 (Fed. Cir. 2000):

> Most if not all inventions arise from a combination of old elements. Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art,

there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant.

In this instance, the only motivation cited by the Office Action for suggesting the feature of using short-term and long-term averaged energies to determine whether or not a current audio frame is silence is a general assertion that "to the extent that *Polcyn et al and Modi et al* do not implement short-term averaged energy, long-term averaged energy,...it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of *Polcyn et al and Modi et al* to implement the averaged energy determinations and calculations for the purpose of providing an enhanced voice activity detection system for deciding when received audio contains voice or other audio information of importance...." *See Page 4 of the Office Action.* This is insufficient, as a matter of law, to support a prima facie case of obviousness rejection because the lack of implementation does not inherently provide motivation. Such rationale is tantamount to impermissible hindsight reconstruction.

Therefore, Applicant respectfully requests the Examiner to withdraw the outstanding §103 rejection. It is noted that the same rationale can be applied to traversing the outstanding §103 rejection of dependent claims 5 and 24 and is incorporated by reference.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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